

REMARKS

Claims 1, 2 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ballard (U.S. Patent Number 4,834,186). Claims 26-28 were rejected under 35 U.S.C. § 102(e) as being anticipated by Ziaylek et al. (U.S. Patent Number 6,220,557).

Claims 23-25 and 29-37 were allowed. Claims 3, 4 and 6-14 were objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejections under 35 U.S.C. § 102(b) - Ballard (U.S. Patent Number 4,834,186):

Claims 1, 2 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ballard. For a claim to be anticipated, each and every element as set forth in the claim must be found in a single prior art reference. (See M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).)

As amended, claim 1 requires a top adjustable mount assembly that includes a plurality of mast engaging elements positioned at spaced locations on the top frame and adjustable with respect to the top frame to extend radially inward for securing the construction mast.

The Office Action states that Ballard discloses “a truss (figure 6) for fixed connection to a vertical surface (53, figure 2), the truss including a top frame (100), a bottom frame (102)... and a top and bottom adjustable mount assembly each with plurality of mast engaging elements (106 and 108) positioned at spaced locations on the top and bottom frame and adjustable (via 114) to extend radially inward wherein the engaging elements secure the mast (24).” (See Office Action, p. 2.)

Ballard does not disclose a plurality of mast engaging elements that are adjustable with respect to a top frame to extend radially inward. In Ballard, it is the spring arms 100 and 102 that are adjustable. Ballard discloses: “When the spring arms 100 and 102 are in their normal positions, the vertical pipe 24 is free to be vertically moved through the aligned openings 104 of the arms.” (Column 8, lines 52-

54.) As shown in Figure 6, in the normal positions, the spring arms are at a 90 degree angle to bight portion 98. As the spring arms are moved toward each other, the angle between the spring arms and the bight portion is less than 90 degrees. "Such movement of the arms 100 and 102 toward each other will move the curved flaps 106 and 108 into gripping engagement with the pipe 24 which, of course, holds the pipe against vertical movement relative to the clamp means 96." (Column 8, lines 57-61.)

In Ballard, the adjustability of the arms, which reduces the distance between the arms 100 and 102, is what causes the curved flaps 106 and 108 to secure the pipe 24. Ballard does not disclose mast engaging elements that are adjustable with respect to the top frame portion to extend radially inward for securing the mast. Since Ballard does not disclose this element of amended claim 1, claim 1 is not anticipated by Ballard.

Claims 2 and 5 are dependent on claim 1 and contain all the limitations of claim 1. Since claim 1 is not anticipated by Davis, it is not possible for claims 2 or 5 to be anticipated by Davis. Moreover, similar to claim 1, amended claim 2 requires a bottom adjustable mount assembly that includes a plurality of mast engaging elements positioned at spaced locations on the bottom frame and adjustable with respect to the bottom frame to extend radially inward for securing the construction mast.

Claims 3, 4 and 6-14 were objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims. Since claim 1, as amended, is in condition for allowance, claims 3, 4 and 6-14 are allowable as dependent claims of claim 1.

Rejections under 35 U.S.C. § 102(e) - Ziaylek et al. (U.S. Patent No. 6,220,557):

Claims 26-28 were rejected under 35 U.S.C. § 102(e) as being anticipated by Ziaylek. As amended, claim 26 requires a truss including a top frame portion defining a top opening and a bottom frame portion defining a bottom opening, a top adjustable support assembly mounted to the top frame

portion and extending into the top opening, and a bottom adjustable support assembly mounted to the bottom frame portion and extending into the bottom opening.

The Office Action states that Ziaylek discloses “a truss (1) for fixed connection to a vertical surface, the truss including a top frame portion (34) and a bottom frame portion (34), a top adjustable support assembly (24, 26) mounted to the top frame portion,...., a bottom adjustable support assembly (24, 26) mounted to the bottom frame portion.”

Ziaylek does not disclose a top frame portion that defines a top opening or a bottom frame portion that defines a bottom opening. In Ziaylek, element 34 is a main rod member and does not constitute a frame portion defining an opening. Because Ziaylek does not disclose a top frame portion defining a top opening, Ziaylek is unable to teach or disclose a top adjustable mount assembly mounted to the top frame portion and extending into the top opening. Similarly, Ziaylek does not disclose a bottom adjustable mount assembly mounted to the bottom frame portion and extending into the bottom opening. Since Ziaylek does not disclose these elements, amended claim 26 is not anticipated by Ziaylek.

Claims 27 and 28 are dependent on claim 26 and contain all the limitations of claim 26. Claim 26 is not anticipated by Ziaylek; thus, it is not possible that claims 27 and 28 are anticipated by Ziaylek.

CONCLUSION

The above amendments to claims 1, 2 and 26 were made for the purpose of further defining the invention in view of newly cited art that was not cited previously. With the above amendments and remarks, the application is now in condition for allowance. Notice to that effect is respectfully requested.

First Named Inventor: David R. Bissen

Application No.: 10/043,066

-13-

Respectfully submitted,

KINNEY & LANGE, P.A.

Date: 10/11/05

By: 

David R. Fairbairn, Reg. No. 26,047

THE KINNEY & LANGE BUILDING

312 South Third Street

Minneapolis, MN 55415-1002

Telephone: (612) 339-1863

Fax: (612) 339-6580

DRF:ANS/ks